



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Adopt Resolution Entering into Agreement with DAVE Transportation Services, Inc. for Transit Services, and Approve Related Actions

MEETING DATE: September 18, 1996

SUBMITTED BY: Interim Deputy City Manager

RECOMMENDED ACTION: That the City Council adopt the attached resolution entering into an agreement with DAVE Transportation Services, Inc., for transit services, beginning October 1, 1996, and extending for 2 3/4 years, and authorizing the Mayor to sign on behalf of the City.

Staff also respectfully recommends Council's favorable action on several related matters: a pay-out arrangement for sick leave balances for affected personnel, a transitional arrangement for personal computer loans for two transit employees, and provision for converting two contract maintenance positions to permanent status.

BACKGROUND INFORMATION:

◇ AGREEMENT

The agreement we have negotiated with DAVE Transportation Services, Inc., based on the model that was issued as part of the RFP, is a favorable one to the City. Under this agreement, DAVE will provide all management and personnel services, and the City will continue to provide maintenance and fuel, at significant savings over alternative methods. The City's drivers will be given preferential treatment in hiring, ensuring continuity of high quality service. In refining the details during negotiations, we have been able to reduce the cost of some line items and those savings have been allocated to the enhancement of benefits for employees, specifically, the addition of five "personal time off" days per year, as a replacement for sick leave. The cost of \$2,006,261 is just a few dollars less than previously reported to you, and through this agreement Council may be assured of a guaranteed cost of operations. Since reporting to you that the City would probably continue to wash buses as part of its maintenance responsibilities, we have continued to review this matter, and believe that it will be more cost-effective, by as much as \$30,000, to transfer this function to DAVE. Weekly bus washing will add \$10,457 on an annualized basis, for an overall total of \$2,035,017 for the 2 3/4-year period, and we respectfully recommend that this option be included in the agreement. The transition of service will occur on Tuesday, October 1, but it is unlikely that our customers and the public generally will notice any change. (Even the uniforms, which we reported might be the most significant apparent change, will remain the same, although the method of providing them will be slightly different).

◇ LEAVE BALANCES

Council was quite clear in wanting to avoid any loss of leave balances earned by transit personnel, and we believe that your objectives can be achieved. Vacation and holidays are no problem, as adequate provision already exists for payment of balances. Sick leave is a somewhat different matter, as sick leave is generally only compensable at retirement. We believe that this transition of the transit operation to private sector management and staffing is sufficiently special, however, as to merit special handling, and it is very much in the interest of the City, as well as the personnel, to have an orderly transition, without loss to any party. For this reason, we respectfully recommend that Council, by favorable action on this report, authorize a payment of all sick leave balances to transit personnel at the time of transition.

APPROVED: _____

H. Dixon Flynn -- City Manager

◇ **COMPUTER LOANS**

Two transit employees have taken advantage of the City's personal computer loan program and have existing loan balances which normally would be due and payable at the time of transition. The balances (\$861 in one case, \$1,827 in the other) would be difficult to pay off in a lump sum, and in order to avoid such a burden on the employees concerned, we respectfully recommend another deviation from City policy in this special case, to permit continued repayment rather than lump sum payment, perhaps over a shorter period of time.

◇ **CONVERSION OF MAINTENANCE POSITIONS**

As Council is aware, two maintenance positions were established a year or so ago, through a contractual arrangement, until such time as a firm decision was made on how to maintain City buses. Assuming that Council concurs in the basic recommendation to contract with DAVE, with the City retaining maintenance of the buses, we respectfully recommend Council action placing the maintenance positions on a permanent basis. This would affect the contract positions of Heavy Equipment Mechanic and Equipment Service Worker, and again, can be accomplished through approval of this report.

◇ **PERS CONVERSION**

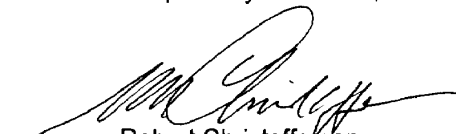
For information only, as no Council action is necessary on this point, we have followed up with the Public Employees Retirement System to determine if transit employees can roll PERS balances over into DAVE's 401(K) retirement plan, as an alternative to withdrawing their money or leaving it on deposit. For those who wish to take this option, this, combined with Social Security, would constitute replacement for the PERS retirement system, with DAVE making contributions to the 401(K) program. PERS has no problem with rollover; it is simply a question for the individual 401(K) investment vehicle as to acceptability. Based on the contacts we have made in the financial community, it appears that there are such rollover opportunities.

FISCAL EFFECT

As previously reported, the cost of this program will be covered by federal transit funds. The 2 3/4-year cost, \$2,006,261 (\$2,035,017 if Council wishes to transfer bus washing to the contractor) would be spread over the three fiscal years.

Council's favorable action on this report would constitute approval of these related actions and authorize the transition that was discussed at your meeting of September 4 and at the previous "Shirtsleeve" Session.

Respectfully submitted,



Robert Christofferson
Interim Deputy City Manager

RC:br

Attachments

EXHIBIT 1

SCOPE OF WORK

This Exhibit describes the services to be performed by the CONTRACTOR and LODI, respectively, in providing fixed route and dial-a-ride services for the City of Lodi Transit System. This work scope describes all of the work to be performed whether by LODI or CONTRACTOR.

The services to be provided under "Base Service" include two types 1) Dial-a-Ride and 2) Fixed Route. Base service will require a total of approximately 31,520 vehicle service hours each year to be provided as described subsequently and is based upon vehicle service hours as defined.

The term "Vehicle Service Hour" is defined as that time during which a revenue vehicle is available to carry fare-paying passengers, and which includes only those times between the time or scheduled time of the first passenger pick-up and the time or scheduled time of the last passenger drop-off during a period of the vehicle's continuous availability. (A vehicle is in revenue service despite a no-show or late cancellation, if the vehicle remains available for passenger use). For example, demand responsive service hours include those hours when a vehicle has dropped off a passenger and is traveling to pick up another passenger, but not those hours when the vehicle is unavailable for service during a lunch break. For both demand responsive and fixed route, service hours will exclude hours of "deadhead" travel to the first scheduled pick-up, and will also exclude hours of "deadhead" travel from the last scheduled drop-off back to the terminal. For fixed route, a vehicle is in service from the first scheduled to the last scheduled stop, whether or not passengers board or exit at those points (deleting lunch and breaks but including scheduled layovers).

OPERATIONAL HOURS SHALL BE AS FOLLOWS:

1) DIAL-A-RIDE services are to be provided to any person in the service area. The dial-a-ride service is available Monday through Friday between the hours of 6:30 a.m. through 7:00 p.m.; on Saturdays from 7:30 a.m. to 6:30 p.m. and, on Sundays between 12:00 noon to 5:00 p.m. This service shall be operated on a "demand response" scheduling basis so that the passenger can receive service on the same day requested, generally within forty-five (45) minutes of their request for service. At the passengers option, an advanced reservation for service may be requested. It is LODI's intent that there be no denials or "turndowns" of passenger requests for service within the established service hours and service area. Unless otherwise specified, the dial-a-ride part of the overall service program will be curb-to-curb for all passengers. The maximum service includes providing assistance to a passenger from the portal of their residence to the actual on-site location of their destination and return. In no case will the driver enter a passenger's residence nor will the driver provide assistance which places the driver out of sight of the dial-a-ride vehicle..

This service will operate an estimated total of 17,200 vehicle service hours annually.

At a minimum, CONTRACTOR's administrative/dispatch offices are expected to be open during Monday through Friday from 6:00 a.m. through 7:00 p.m.; Saturday from 7:30 a.m. through 6:30 p.m.. and Sunday from 12 noon to 5:00 p.m.

- (2) Fixed Route services for the general public shall operate Monday through Fridays, 6:30 a.m. to 6:30 p.m. and on Saturdays from 8:00 a.m. to 6:00 p.m. for an estimated maximum total of 14,320 vehicle service hours annually

No service will be provided on the following holidays:

- * New Year's Day
- * President's Day
- * Memorial Day
- * Independence Day
- * Labor Day
- * Thanksgiving Day
- * Christmas

A. BASE SERVICE RESPONSIBILITY OF CONTRACTOR

Base Service will, at a minimum, require the CONTRACTOR to be responsible for:

- * day to day management
- * All drivers, dispatchers, supervision, and related personnel for the service;
- * Driver Training;
- * Certification of user eligibility;
- * Information Services
- * Record keeping and reporting;
- * Safety
- * Farebox Revenues
- * Licenses
- * Drug Testing Compliance
- * Fueling of vehicles

1) Management

CONTRACTOR will manage the day-to-day operation in accordance with City Council service design and prudent management practices generally acceptable in the transit industry.

Management of day-to-day operations of the system will be vested in a local Operations Manager who will be experienced in all aspects of public transit operations. The person serving as Operations Manager shall be approved by LODI. In the event that the Operations Manager must be replaced, such replacement shall be subject to the prior approval of LODI.

LODI intends that the Operations Manager shall be on a full-time basis and shall not perform any other duties for contractor, being solely dedicated to management and operation of LODI's transit system operations. This person must be authorized to act throughout the service area on behalf of CONTRACTOR.

The above individual(s) will be responsible for managing and monitoring all aspects of the system operation, quality of service, accounting, fare collection, personnel, and contract administration. The Operations Manager and CONTRACTOR shall supply LODI a 24-hour emergency telephone number at which Operations Manager or CONTRACTOR can be reached.

Contractor shall also designate a responsible senior executive employee of Contractor who will be available during hours of operation either by phone or in person, to make decisions and/or provide coordination as necessary. This senior executive likewise must be authorized to act throughout the service area on behalf of CONTRACTOR.

CONTRACTOR shall seek out and implement methods of improving system operations, service and cost effectiveness along with improvements to correct deficiencies and substandard performance. Results will be reported to LODI via the monthly activity report or direct memo along with any corrective actions which have been taken. CONTRACTOR shall review and comment on plans, equipment purchases, operative changes, and related proposals of LODI.

In addition, CONTRACTOR shall certify its operations and workplace as a Drug-Free Workplace and shall participate in an Employee Substance Testing procedure as required by federal and state regulations subject to LODI approval.

2) Personnel, Replacement, and Liaison

The CONTRACTOR shall provide all management, drivers, dispatchers, telephone information operators, road supervision and such other personnel necessary to responsibly operate LODI transit system, including any required on-board security or supervision.

CONTRACTOR will recruit, screen, hire, discipline and train personnel as necessary; conduct monthly safety and other related employee meetings as necessary; and perform liaison activities with LODI and other agencies related to execution of this contract. A copy of employee benefits, work rules, and any applicable union contracts shall be provided to LODI. CONTRACTOR shall meet and coordinate with LODI's Transportation Manager not less than once a week.

CONTRACTOR shall supervise all drivers to the end that they are courteous to all users at all times and respond to users questions regarding use of the transit system or connecting systems accurately.

CONTRACTOR will also attend meetings with user groups or agencies as required and upon request of LODI. CONTRACTOR shall further attend meetings of LODI committees or LODI City Council upon request including the annual "Unmet Needs" hearings.

Upon request by LODI, CONTRACTOR will be responsible for making presentations to community organizations concerning LODI transit services and shall report monthly to LODI on its marketing activities.

3) Driver Training

CONTRACTOR shall provide training for all personnel working under this contract. It is the sole responsibility of the CONTRACTOR to insure that each individual is fully knowledgeable of their duties and responsibilities and can operate a bus in a safe manner. It is also the CONTRACTOR's responsibility to provide the necessary training to insure that each driver meets, or exceeds, the minimum qualifications for a General Public Paratransit Vehicle driver, as outlined in Title 13 of the California Code of Regulations. Contractor shall also establish and maintain driver records pursuant to Title 13 C.C.R. subject to review by Lodi and the California Highway Patrol (CHP). It is also the Contractors, responsibility to provide additional training if the training requirements specified by Lodi are insufficient. This training must be completed before a driver can enter unsupervised passenger service.

a. There shall be an additional 40 hours of instruction on contractors policies and procedures, radio procedures, schedules, routes, fare collection, transfer policies, accident procedures, accident report writing, passenger handling, passenger empathy and wheelchair transportation.

b. In addition to previously mentioned training there shall be:

1. A minimum of two hours of hands on wheel chair training to include, but not be limited to familiarization with lift and lift components, proper lift operation including manual operation, proper loading and unloading procedures, proper securement procedures, wheelchair emergency and evacuation procedures.
2. A minimum of sixteen hours of individual behind the wheel instruction from a qualified driving instructor while out of service.
3. Sufficient training so the driver can obtain a recognized First Aid and CPR Training Certificate. This training can be waived if the driver has completed the same training within three months of hiring.
4. Completion of driving along all routes at least twice before being allowed to drive in service unsupervised.

c. Other requirements

1. No driver shall be allowed to operate equipment in Lodi service until they have been trained and signed off by a qualified instructor to properly operate the vehicle type to which they have been assigned.
2. A minimum of one hour of safety/on going training every month for every driver employed.
3. Whenever a driver is involved in a preventable accident and whenever a driver is involved in two or more non-preventable accidents in any twelve month period, CONTRACTOR's qualified instructor shall ride with that driver and perform an evaluation and retraining as necessary.

All CONTRACTOR's drivers shall be subject to a pre-employment background check, review of DMV records, GPPV certification and may be included in City's Pull Notice Program. CONTRACTOR shall provide LODI with a list of drivers prior to start-up, and shall update said list monthly. CONTRACTOR shall not place a driver into service without completing the training program specified above. LODI representatives shall be allowed to attend safety meetings.

4) Marketing and Promotion

CONTRACTOR shall be responsible for assisting LODI in the development and preparation of all marketing materials for the fixed route and dial-a-ride services. LODI shall be responsible for the placement, scheduling and distribution of all advertising and promotional materials designed to inform users of LODI services and to promote ridership.

CONTRACTOR shall assist LODI in the distribution and dissemination of such materials in accordance with the provisions of this agreement and any directions supplemental thereto provided by LODI.

CONTRACTOR shall promote the service as the operator for LODI. CONTRACTOR shall assist LODI in the distribution of brochures and other material as directed by LODI.

CONTRACTOR shall, under the direction of the LODI Transportation Manager provide contact on at least a quarterly basis with private and non-profit community agencies (e.g. Health for All, HSS Adult Day Care) and local governing bodies to promote interest in the transit services of LODI. These contacts shall include, but not be limited to: speaking engagements, public service announcements, and press releases.

5) Reporting and Record Keeping

CONTRACTOR shall collect data on the operation of the transit system and supply the data to LODI on a monthly basis, or as may otherwise be directed by LODI. All such information supplied by CONTRACTOR shall be certified as accurate and compatible with Lodi's computer system.

CONTRACTOR's Management Information System shall provide an adequate methodology to gather, store, retain, calculate, compute, cross reference and display in textual, tabular and graphic form all operating, performance and financial data associated with this contract.

CONTRACTOR shall collect the following information, at a minimum, on a daily basis:

- Passengers by vehicle and service type, divided into passenger classification categories (e.g. elderly, disabled, etc.)
- Vehicle service hours (by vehicle and total)
- Vehicle revenue miles
- Vehicle total miles
- Revenue by vehicle
- Passenger travel time
- Pickup time variance (difference between promised and actual pick up times)

- Missed trips, detailing cause
- Service requests refused, with reason
- Vehicle breakdowns
- Vehicle and passenger accidents
- Vehicle condition
- Employee training and turnover
- Complaints and compliments

The CONTRACTOR shall prepare a monthly report summarizing the data collected daily. CONTRACTOR shall submit a typed report to LODI by the 15th day of the following month. The format of the report is subject to LODI's approval. All original data shall be maintained by the CONTRACTOR for at least four years.

In addition to the monthly reporting, the CONTRACTOR shall supply any and all reports necessary to comply with requirements of the San Joaquin County Council of Governments and other local, State, or Federal authorities. These reports will include but not be limited to all required California Transportation Development Act and Federal Transit Administration reporting requirements.

CONTRACTOR shall also provide LODI with immediate notice and written copies of accidents (written reports within one business day for injury accidents, three business days for non-injury accidents, with immediate telephone notification of all injury accidents), and CHP Safety Compliance Reports (within two business days after CHP submission to CONTRACTOR). CONTRACTOR shall immediately notify the California Transit Insurance Pool (CalTIP) Third Party Administrator of any accidents.

LODI will periodically conduct surveys of ridership during the term of the agreement. These surveys will determine matters such as socioeconomic, ridership and fare-type characteristics of system users. CONTRACTOR shall cooperate in the conduct of all surveys, including having its in-service drivers participate, where operationally possible, at no additional charge to LODI.

CONTRACTOR agrees that all information required to be furnished by this agreement shall be free from proprietary restrictions. CONTRACTOR further agrees that all such data is public and in the public domain.

CONTRACTOR shall maintain accurate and complete books, records, data and documents on generally accepted accounting principles in accordance with Uniform System of Accounts and Records adopted by the State Controller pursuant to Section 99243 of the Public Utilities Code, and as required by LODI or the San Joaquin County Council of Governments. Such records shall be kept in such detail and form so as to meet applicable local, state and federal requirements.

A complete and separate set of books, accounts, and/or records shall be maintained by CONTRACTOR, which records shall show details of transactions pertaining to the management, maintenance and operation of only this system under the terms of this agreement. System transactions shall not be co-mingled with CONTRACTOR's other operations, if any. CONTRACTOR's records shall be kept with sufficient detail to establish an audit trail to verify that

any and all costs charged to the system are in fact due to operations pursuant to the agreement, and not due to separate or charter operations by CONTRACTOR.

6) Safety and Security

CONTRACTOR shall be responsible for safety and security of passengers during operations and for all related equipment and facilities. Safety and organizational meetings shall be held with all employees at least once per month.

CONTRACTOR shall report to LODI all hazardous conditions (e.g., trees, signs, potholes, etc.) in the service area to LODI and any other appropriate authority and take necessary precautions to safeguard passengers and personnel.

CONTRACTOR shall comply with all California Highway Patrol, Cal-OSHA, and OSHA requirements. CONTRACTOR shall not permit drivers to carry weapons of any type while operating a vehicle under this contract.

7) Telephone Information Service

CONTRACTOR shall provide telephone information service 24 hours per day; this can be done by answering machine, which will give hours of operation, costs, and other pertinent information. During the hours the dispatch center is open it is expected that calls will be answered as they are received.

LODI shall maintain at LODI's expense at least three telephone lines covering the entire City of Lodi service area, dedicated to LODI transportation services with rollover line capability. CONTRACTOR shall publish these LODI fixed route and dial-a-ride information phone numbers in the local telephone directory(ies).

These lines shall be used solely for the purpose of providing customer information, serving trip requests, and those activities required under the Scope of Work, and shall not be used by the CONTRACTOR for any other purpose. These telephones shall be answered as specified by LODI. Upon termination of the agreement, such phone numbers remain the property of LODI.

During normal system operating hours, the CONTRACTOR shall provide dispatchers or information operators who are knowledgeable of time schedules, routes and transit services of LODI as is necessary to answer information requests and/or questions in a courteous, timely and professional fashion.

During all other times, CONTRACTOR shall utilize a CONTRACTOR-provided telephone answering machine or other approved method and equipment to provide general information about LODI transit services and to be able to receive and record trip cancellations.

8) Farebox Revenue

CONTRACTOR's drivers shall collect fares as established by LODI and maintain an accurate count of all boarding passengers by fare category. CONTRACTOR shall provide a locked high security room or space for storage of revenue and collection units as needed.

Farebox revenue is the property of LODI. To the extent possible farebox revenue shall be segregated by route. Shortages must be investigated and corrected by CONTRACTOR.

9) Licenses

CONTRACTOR shall be responsible for any locally-required business or other licenses, including Public Utilities Commission certificates as required and necessary. CONTRACTOR shall also be solely responsible for any parking and traffic violations of vehicles operated in connection with LODI's fixed route and dial-a-ride program. If notice of violation in a LODI-owned vehicle is received by LODI, LODI may pay for said violations and deduct the amount paid from future payments to CONTRACTOR.

10) Uniforms

CONTRACTOR shall provide and maintain clean, identical uniforms to be approved by LODI for all drivers and shall enforce a dress and appearance code, also subject to approval from LODI. At a minimum, dress requirements shall include: shirts, slacks or shorts, jackets for use in cold or rainy weather, identification tags and LODI-specified logo. Sandals or open-toed shoes are not allowed.

11) Drug and Alcohol Testing Compliance

CONTRACTOR shall comply with all applicable drug and alcohol testing requirements as established by FTA or by other State or Federal agencies.

At a minimum, CONTRACTOR shall perform pre-employment, reasonable cause, and post-accident drug and alcohol testing of all safety-related employees associated with LODI service, in conformance with FTA requirements. In the case of randomly sampled testing, CONTRACTOR shall comply with State and Federal requirements.

12) CalTIP Safety Audit

CONTRACTOR shall cooperate and participate in CalTIP-conducted safety audits of CONTRACTOR's operation relative to the services provided on behalf of LODI. CONTRACTOR shall comply with the safety-related recommendations provided by the safety consultant.

13) FUEL

CONTRACTOR will be responsible to make provisions for the dispensing of fuel for all vehicles. Records must be kept as to the amount of fuel used by each vehicle on a daily and a month by month basis.

14) VEHICLE MAINTENANCE

CONTRACTOR shall be responsible for the day to day cleanliness of the vehicles. CONTRACTOR is expected to be responsible for the following:

- a. All equipment shall be reasonably clean throughout both inside and out prior to each service run. Exteriors of all vehicles, including wheels, shall be washed at least weekly, or more often as necessary. Windows and stanchions shall be washed and floors mopped at least once per week, or more often as necessary, on all vehicles. Driver windows shall be kept clean at all times. Ceilings and walls shall be thoroughly cleaned at least once per month, or more often as necessary, on all vehicles.
- b. Vehicles shall be kept free of insects and vermin at all times. CONTRACTOR shall exterminate all insects and vermin from all vehicles immediately upon their discovery, utilizing materials which are safe and not noxious to passengers.
- c. Interiors shall be dusted and swept, with trash removed, on a daily basis, or more often as necessary, on all vehicles used in service that day.

B) RESPONSIBILITIES OF THE CITY OF LODI

Base Service will be met by utilizing vehicles provided by LODI. Vehicles provided will be in a roadworthy condition.

If vehicles are for any reason not available for service during the term of this contract, LODI shall have the option of providing suitable replacement or back-up vehicles during the remaining term of the Agreement or requiring the contractor to provide such vehicles pursuant to a separately negotiated agreement.

LODI shall perform the following duties and accept the following responsibilities with respect to the performance of LODI's transit services. To the extent reasonable and feasible, CONTRACTOR shall assist LODI in this regard.

1) System Planning and Administration

LODI shall be responsible for all planning, coordination and policy activities relative to the fixed route and dial-a-ride services, service areas, fares, schedules, days and hours of operations, preparation of planning documents, budgets, grant applications and related documentation and other such activities relative to overall system administration and contract compliance monitoring. LODI shall establish criteria for eligibility on "specialized" (elderly & disabled) demand-responsive and subscription Dial-A-Ride services.

LODI shall act as the final step and/or body of appeals in the resolution of any service complaints that the CONTRACTOR is unable to resolve.

2) Promotion, Marketing and Customer Service

LODI shall be responsible for development and preparation of all marketing materials for the Lodi transit services. CONTRACTOR shall cooperate with LODI in the placement, scheduling and distribution of all advertising and promotional materials designed to inform patrons of LODI services and to promote ridership.

LODI shall prepare, print and provide to CONTRACTOR as needed all necessary passes, tickets, and transfers to be used in the Transit operation. LODI will also assist in the preparation and printing of service brochures, schedules and like materials required by LODI operations. CONTRACTOR shall distribute and disseminate such materials in accordance with the provisions of this agreement and any directions supplemental thereto provided by LODI.

LODI will provide the use of its normal customer service lines, processes and procedures to receive, investigate and resolve customer service complaints. CONTRACTOR shall cooperate with LODI and provide the access needed to employees and records to resolve all customer and service complaints.

3) Radio Frequency and Equipment

The City of Lodi will provide the base radio, mobile radios for each of the vehicles in the fleet and the radio frequency for the operation of the transit program.

4) Office Facilities and Equipment

The office facilities are located at 115 S. Pleasant Street in Lodi. This facility is provided to CONTRACTOR for use during the term of this agreement. Included with the office facility are the present office furniture, desks, chairs, book cases, file cabinets, tables, workstations, telephones, personal computers, copier and fax machine. Not included with the facility are utilities, janitorial services or office supplies.

C. SYSTEM OPERATION

1.) Notification of Service Changes

Should LODI determine to implement a different design for the transit system, LODI shall, subject to any applicable competitive bidding requirements, confer with CONTRACTOR as to the most appropriate level and description of services and may adopt an appropriately altered Scope of Work document, replacing the one in use at present.

The CONTRACTOR will act in the capacity of an independent contractor and will provide management, technical and operating personnel, services, equipment and facilities necessary for the CONTRACTOR to operate LODI's fixed route and dial-a-ride services.

CONTRACTOR shall operate the system in compliance with LODI operating policies, and with local, state, and federal ordinances, laws, and regulations applicable to this service. CONTRACTOR will operate the system in accordance with the usual transit industry procedures and standards or as otherwise provided herein, in CONTRACTOR's proposal, and the Transit Services Agreement.

The CONTRACTOR shall also provide LODI with technical assistance and consultation in such matters as operating policies, funding, and coordination with other transit providers at no additional charge to LODI.

LODI shall establish policies for operation of the transit system and shall monitor the performance of the CONTRACTOR. LODI shall apply for funds from local, state and federal sources. Where applicable, and subject to consultation and approval by LODI, CONTRACTOR shall also apply for such local, state and federal funds that may be available to support the project.

CONTRACTOR will report to LODI and will make recommendations as to changes to improve LODI's Fixed Route and Dial-A-Ride services. CONTRACTOR may not make any changes which affect the quantity, quality, or nature of the Fixed Route and Dial-A-Ride services without obtaining LODI's written permission.

LODI may wish to adjust the system at some future date. Modifications may include but not be limited to: increasing or decreasing service hours and/or days; or switching service hours and equipment between modes.

2.) Facilities, Equipment, and Supplies

During the term of this Agreement, including any extension period, LODI shall have the option to add vehicles to those currently in the LODI fleet in order to meet the service criteria defined herein. The cost for additional vehicles shall be borne by the City of Lodi

LODI supplied equipment and facilities made available to the Contractor is provided exclusively for LODI's transit program and shall not be used for any other purpose. Contractor shall account to LODI for the location and status of all LODI provided items. Upon completion or termination of this Agreement, Contractor shall return LODI provided items to LODI in good operating condition ready for use less reasonable wear and tear.

In addition, CONTRACTOR shall operate the radio communications system for the fixed route and dial-a-ride services. CONTRACTOR must comply with LODI policies and FCC procedures for radio use.

3.) Accident Procedures

CONTRACTOR shall comply with those accident reporting and investigation procedures established by the California Transit Insurance Pool (CalTIP) and the LODI Transportation Manager, shall endeavor to photograph accident scenes involving LODI service immediately after said accident occurs, shall take and transmit accurate notes of accident scenes using the CalTIP reporting format, shall obtain witness cards whenever possible and appropriate, and shall obtain and transmit all associated police accident reports to both LODI and CalTIP.

Contractor shall provide and maintain an accident reporting kit on each bus at all times, including a disposable 35 mm camera, witness cards, and reporting forms.

If requested by the Transportation Manager or CONTRACTOR, CONTRACTOR shall meet with the Transportation Manager to discuss accidents and incidents, including ways to maintain and improve CONTRACTOR's accident record. The Transportation Manager shall be the sole determinant on whether or not an accident is considered preventable.

4.) Employee Work Rules

The following employee rules shall be enforced by the CONTRACTOR:

1. Uniforms:
 - a. Must be worn at all times when on duty.
 - b. Shall be clean and presentable at all times.
 - c. Uniform designs, colors and ID tags subject to LODI approval.
2. Gratuities:
 - a. Shall NOT be accepted.
 - b. All cash shall go into farebox without being handled by the driver, unless required by the passengers disability.
3. Knowledge of Services and Service Area:
 - a. Drivers shall have a thorough knowledge of LODI services and service area.
 - b. Drivers shall also have a basic knowledge of transfer locations for all connecting routes and services.
4. General Rules:
 - a. No one will be permitted to smoke, eat or drink aboard vehicles at any time. This includes passengers and staff.
 - b. Boisterous language, profanity, or incivility to anyone shall not be allowed while in uniform, on or off duty.
 - c. While in uniform, no employee shall purchase, consume, or be under the influence of any narcotic, intoxicant, or harmful drug.
 - d. Drivers shall be responsible for keeping all vehicles clean and sanitary during their shift.
 - e. All employees are responsible for reporting any defects a vehicle may have to the supervisor and maintenance department immediately. Drivers shall conduct a "walk-around" and in-vehicle inspection of their vehicle and fill out a "squawk" sheet. Drivers shall have maintenance or management personnel resolve any doubt about the safety of a vehicle prior to placing a vehicle in passenger service.
 - f. Employees may use vehicles only in accordance with their assigned duties.

- g. Employees must conduct themselves and operate vehicles in a safe and courteous manner at all times.
- h. No one shall be permitted to solicit on the vehicle.
- i. No item longer than five (5) feet will be permitted on the vehicle.
- j. All information regarding accidents shall be confidential. Employees shall refrain from speaking to anyone concerning any accident unless it is to Police, supervisory personnel, or other person(s) involved in the accident as required by law.
- k. Persons under the influence of any intoxicant, narcotic, or harmful drug shall not be permitted on the vehicle.
- l. Drivers providing service may be required to travel over prescribed routes and maintain time schedules. If it becomes necessary to leave the route, the dispatcher or immediate supervisor shall be notified immediately. No run shall be cut short.
- m. Drivers will provide the assistance required to help elderly and disabled persons boarding and de-boarding vehicles, moving to their seat and or maneuvering and securing wheelchairs. Services are to be provided on a curb-to-curb basis. Under no circumstances will drivers enter a passenger's residence or physically lift a passenger.
- n. No vehicle shall be operated when its condition is unsafe or uncertain.
- o. No driver shall operate the wheelchair lift: a) until he/she has received the required training; and b) if there is any doubt whatsoever about the mechanical condition of the lift or safety of the passenger as a result from using the lift. Wheelchair lift operation compliance with the methodology recommended by the OEMs.
- p. Drivers shall require and insure that all passengers wear the seatbelts provided in the vehicles.

5.) LODI Transit Services Policies and Standards

The CONTRACTOR will make every effort to meet the following LODI transit service policies and standards in the operation of LODI fixed route and dial-a-ride services. Penalty payments shall be assessed in accordance with the Performance-Based Penalty Program, designated as Attachment 1 to this Exhibit.

Performance Standards

- 1. Dial-a-ride 90 percent of passengers will be delivered to their destination within 45 minutes of their initial call.

2. Dial-a-Ride pick up time within 15 minutes of promised time (30 minute window)
3. Dial-a-Ride average trip time not to exceed 20 minutes.
4. Operate service with accidents at less than one per 50,000 miles.

Productivity Standards

1. Trips per dial-a-ride revenue vehicle mile shall not fall below 0.40.
2. Passengers per fixed route revenue vehicle mile shall not fall below 1.0.
3. Trips per revenue vehicle hour shall not fall below 4.0 for Demand-Response.
4. Passengers per revenue vehicle hour shall not fall below 10.0 for fixed route service.
5. Revenue vehicle hours per FTE employee shall not fall below 1200.
6. Farebox recovery ratio of 20% or more for Lodi Transit Services.

These policies and standards are subject to change or modification by LODI at any time. CONTRACTOR will be consulted regarding any change prior to its final adoption.

The following definitions and measurements shall apply to the Performance Monitoring Program:

Accidents per X miles is calculated by dividing the number of accidents in the reporting period by the number of vehicle service miles in that reporting period.

Vehicle breakdowns per X miles is calculated by dividing the number of breakdowns or road calls in the reporting period by the number of vehicle service miles in that reporting period.

The number of vehicles per mechanic is calculated by dividing the number of vehicles in the fleet by the number of mechanic employee equivalents. One full-time employee equivalent equals 2000 hours per year.

Revenue vehicle hours per maintenance employee is calculated by dividing the number of annual vehicle service hours by the number of full-time mechanic equivalents.

Passengers per vehicle service hour is calculated by dividing the number of passengers by the number of vehicle service hours in a reporting period.

ATTACHMENT 1

City of Lodi Transit System Fixed Route and Dial-A-Ride Transportation Services

PERFORMANCE-BASED PENALTY PROGRAM

Through the award of the Contract, LODI and CONTRACTOR agree to this system of penalties to insure the performance required in the agreement. It is the goal of LODI to foster and maintain a cooperative relationship with its CONTRACTOR. The Performance Based Evaluation Program will be used as an outline for measuring the CONTRACTOR's performance and building a cooperative relationship under this Agreement.

(1) On-time Performance

Standard: 95% of pick-ups within 15-minute window
Performance below 95% - \$0.01 per service mile

(2) Passenger Pick-up

Standard: Any failure to pick up a rider for any reserved trip, through no fault of rider.
Penalty: \$100.00 per failure

(3) In-vehicle Ride Times

Standard: Maximum in-vehicle time will be one hour for Demand-Response riders and one-and-a-half hours for Subscription riders.

Penalty: \$25.00 per infraction

(4) Unreported Cancellation of Service

Penalty: \$100.00 per infraction

(5) Miles Between Preventable Accidents

Standard: 50,000 to 70,000 miles between accidents
Performance below 50,000 miles - \$0.01 per service mile

(6) Non-Compliance with Vehicle Appearance Requirements

Penalty: \$25.00 per infraction

(7) Non-Compliance with Reporting Requirements

Penalty: \$250.00 for first infraction

\$500.00 for subsequent infractions

(8) Non-Compliance with Uniform Requirements

Penalty: \$10.00 per infraction

These standards will be measured by LODI's Transportation Manager or designee according to the following:.

1. Miles between road calls based on LODI's review of CONTRACTOR's reports, passenger complaints, on-site inspection, review of vehicle maintenance records and data supplied in monthly reports.
2. On-time service performance will be based on a review of CONTRACTOR's records and, as required, a survey of passengers.
3. Miles between accidents will be based on a review of CONTRACTOR's records, accident reports, police reports, monthly reports and visual inspections of vehicles.
4. Uniform/dress code compliance will be based on LODI's visual observation.
5. Vehicle appearance will be based on CONTRACTOR's records, field inspections and passenger complaints.

TRANSIT SERVICES AGREEMENT

THIS AGREEMENT is made this 18th day of September, 1996, by and between the City of Lodi, hereinafter referred to as "LODI" and DAVE Transportation Services, Inc., hereinafter referred to as "CONTRACTOR."

WITNESSETH:

WHEREAS, CONTRACTOR has the management and technical personnel, expertise, and other assets useful for the support of LODI's transportation project; and

WHEREAS, CONTRACTOR is desirous of providing such services; and

WHEREAS, LODI is desirous of obtaining such services for said project; and

NOW THEREFORE, in consideration of the foregoing recital and covenants and agreements of each of the parties, the parties do agree as follows:

1. Purpose:

LODI hereby contracts with CONTRACTOR to provide transportation management operations and vehicle services upon the terms and conditions hereinafter set forth.

2. Scope of Work:

CONTRACTOR will provide the services to be rendered as set forth in the RFP and the Proposal made by the CONTRACTOR and any modifications thereto negotiated by the parties attached hereto and by reference incorporated herein and made a part hereof as set forth in Exhibit 1 (Scope of Work).

3. Time Period:

The term of this Agreement shall be from October 1, 1996 to June 30, 1999, inclusive. CONTRACTOR shall commence start-up for transit service operations of LODI's Fixed Route and Dial-A-Ride transportation project no later than October 1, 1996, and commence revenue passenger service not later than October 1, 1996, and shall continue operation through June 30, 1999, within the budget defined under the heading "Maximum Obligation." Upon agreement by LODI and the CONTRACTOR, this Agreement may be extended for up to three one-year periods.

4. Maximum Obligation:

a. For the period October 1, 1996 to June 30, 1999, LODI agrees to pay CONTRACTOR for its services as described herein. The maximum cost to be paid by LODI to CONTRACTOR shall not exceed \$566,562.00 during the October 1, 1996 to June 30, 1997 period, \$721,261.00 during the July 1, 1997 to June 30, 1998 period (hereafter FY 1997-1998), \$747,195.00 during the July 1, 1998 to June 30, 1999 period (hereafter FY 1998-1999).

b. These maximum amounts are based on the assumption that CONTRACTOR will provide the 31,520 vehicle service hours during each budget period:

A Vehicle Service Hour is defined as that time during which a revenue vehicle is available to carry fare-paying passengers, and which includes only those times between the time or scheduled time of the first passenger pick-up and the time or scheduled time of the last passenger drop-off during a period of the vehicle's continuous availability. (A vehicle is in revenue service despite a no-show or late cancellation, if the vehicle remains available for passenger use). For example, demand responsive service hours include those hours when a vehicle has dropped off a passenger and is traveling to pick up another passenger, but not those hours when the vehicle is unavailable for service during a lunch break. For both demand responsive and fixed route, service hours will exclude hours of "deadhead" travel to the first scheduled pick-up, and will also exclude hours of "deadhead" travel from the last scheduled drop-off back to the terminal. For fixed route, a vehicle is in service from the first scheduled to the last scheduled stop, whether or not passengers board or exit at those points (deleting lunch and breaks but including scheduled layovers).

c. In the event CONTRACTOR does not complete the number of Vehicle Service Hours for each budget period as defined in Section 4 of this Agreement, then the Maximum Obligation defined in Section 4 (a) shall be reduced for each and every Vehicle Service Hour not provided by CONTRACTOR. The amount of reduction per Vehicle Service Hour is as follows:

October 1, 1996 to June 30, 1997:	\$14.52
July 1, 1997 to June 30, 1998:	\$14.64
July 1, 1998 to June 30, 1999:	\$15.23

In no event will LODI be required to pay CONTRACTOR more than the adjusted Maximum Obligation (excluding Extra Service and Change Orders) during any budget period without the prior written approval of LODI.

5. Price Formula:

LODI agrees to pay CONTRACTOR for performance of the base services set forth in this Agreement as follows, but in no event shall the total payments exceed the amounts set forth in Section 4 above:

a. Payment of a fixed hourly rate, per vehicle service hour, of \$14.52 in 1996-97, \$14.64 in 1997-98, and \$15.23 in 1998-99. The hourly rate shall compensate CONTRACTOR for vehicle operator's wages, fringe benefits and indirect labor costs, uniforms and physicals. CONTRACTOR agrees to charge LODI for actual labor costs incurred, not to exceed the maximum hourly wages for each employee classification, as set forth in the RFP by this reference incorporated in and made a part of this Agreement.

b. Payment of a fixed monthly rate, per service month, of \$24,800.00 in 1996-97, \$21,648.00 in 1997-98, and \$22,257.00 in 1998-99. This monthly rate shall compensate CONTRACTOR for the following: vehicle operator's non-service wages; management's and dispatcher's wages; said employees' fringe benefits and indirect labor costs; report reproduction;

dispatch office supplies; required insurance, project telephones, vehicles leases as necessary, recruiting supplies, office supplies, marketing, one time start up expenses, fee, and all other related operational costs necessary to complete the project as specified and set forth in the RFP and by this reference incorporated in and made a part of this Agreement.

c. CONTRACTOR and LODI acknowledge that the sums due CONTRACTOR under above paragraphs 5 (a) and 5 (b) are determined on the basis of the projected costs of labor (direct and indirect) and the services, supplies, equipment, and facilities set forth in paragraph 5 (b). The parties hereby agree that the sums due and billed to LODI under each of said above paragraphs shall be subject to adjustment on the following basis:

(1) At the close of each calendar quarter during which this Agreement was in effect, LODI shall determine, based on data provided to it by CONTRACTOR, the actual cost of providing services pursuant to this Agreement. When such actual cost of providing services is determined to have been lower than the projected cost, the sums due and payable for vehicle service hours and the monthly fee shall be adjusted downward to the actual cost figure. In the event that the actual documented costs to CONTRACTOR exceed the budgeted amount in any quarter following a quarter in which a downward adjustment was made and a refund paid to LODI, LODI agrees to reimburse CONTRACTOR for actual documented costs in an amount not to exceed the downward adjustment refunded to LODI for the preceding quarters.

(2) In order to permit LODI to determine the necessity of an adjustment pursuant to paragraph 5 (c)(1), CONTRACTOR shall make the information set forth in paragraph 7 (c) available to LODI within sixty (60) days of the close of each of the first three calendar quarters and within ninety (90) days of the fourth contract quarter. In the event that a downward adjustment is required, CONTRACTOR shall make refund to LODI within thirty (30) days of notice to CONTRACTOR by LODI that a refund is owing. If such refund is not made within the allowed time, LODI will deduct the amount from the CONTRACTOR's next payment.

CONTRACTOR shall submit to LODI, on a monthly basis, a statement of expenses incurred during the month for which CONTRACTOR is billing LODI. Said statement of expenses shall be detailed by account categories acceptable to Lodi and utilized by CONTRACTORS system of accounts. Reporting categories in CONTRACTOR's system of accounts shall conform to the Uniform System of Accounts.

c. In addition to the charges described in 5. b above, LODI shall pay CONTRACTOR on a monthly basis any and all sums due as a result of negotiated Change Orders and/or Extra Services provided. These Change Orders and Extra Services shall be excluded from the "Maximum Obligation" limitation described in Section 4 of this Agreement.

d. LODI agrees to provide the following to CONTRACTOR at no cost to the CONTRACTOR: vehicles as required to provide contract services, all fuel and lubricants used in the performance of this Agreement; system planning; system marketing; vehicle liability, comprehensive, collision and property damage insurance; vehicle and radio maintenance; dispatch and administrative facilities, vehicle garaging, and fareboxes in the vehicles.

6. Invoices:

CONTRACTOR shall submit invoices to LODI as follows:

a. Hourly costs shall be directly traceable by dispatcher and/or driver trip sheets and employee time sheets, said invoices shall specify the dates of service and designate by driver and vehicle number the number of revenue service hours claimed; copies of which will be submitted to the LODI monthly with each invoice to LODI or made available for inspection.

b. Fixed monthly rate as defined in 5(b) shall be added to the monthly invoice, in addition to the hourly cost described in 5(a).

c. Charges for extra services as authorized by this Agreement shall be billed monthly with charges directly traceable to trip sheets, receipts, bills, etc., copies of which shall be attached to the invoice. Each such statement shall contain a certification that all amounts billed are in accordance with this Agreement.

7. Record keeping and Reporting:

a. A complete and separate documentation, accounts and/or records shall show details of transactions pertaining to the management and operation of LODI's system under the terms of this Agreement as set forth in the RFP. System transactions shall not be co-mingled with other CONTRACTOR operations, if any. CONTRACTOR's records shall be kept with sufficient detail to establish an audit trail to verify that any and all costs charged to LODI's system are in fact due to operations pursuant to this Agreement.

b. All costs charged to this agreement must be demonstrated to have been expended for operations pursuant to this agreement to be reimbursable under the terms of this Agreement.

c. CONTRACTOR shall submit the following reports to LODI on a monthly basis:

- (1) Labor Cost Report - Summarizing the total amount of labor and fringe benefits charged to LODI;
- (2) Expense Report - Listing in detail all materials charged to LODI;
- (3) Labor Distribution Report - A detailed listing of all labor attributable to LODI transit systems by type.

d. Nonfinancial records shall be maintained and reported in accordance with Paragraphs 16 through 18 of this Agreement.

8. Payment:

All payments by LODI shall be made in arrears, after the service has been provided. Payment shall be made by LODI no more than forty-five (45) days from LODI's receipt of an invoice. If LODI disputes any item on an invoice for a reasonable cause, LODI may deduct that disputed item from payment, but shall not delay payment for the undisputed portions. The amounts and reasons for such deletions shall be documented to CONTRACTOR within forty-five (45) working days of the receipt of the invoice by LODI. If CONTRACTOR disagrees with the

deductions made by LODI, such disputes shall be resolved under the provisions of Paragraph 25 of this Agreement. LODI shall assign a sequential reference number to each deletion. Payments shall be by voucher or check payable to and mailed first-class to:

CONTRACTOR: DAVE Transportation Services, Inc.
File No. 54725
Los Angeles, California 90074-4725

9. Operating Revenues:

All operating revenues collected by CONTRACTOR are the property of LODI. Operating revenues include but are not limited to, all fares, extra services, and rental of equipment. They shall be deposited daily and kept separate under appropriate security. Reports on the revenues collected and deposited shall be provided to LODI.

CONTRACTOR shall provide LODI with a written description of CONTRACTOR's procedures regarding the collection, counting and controlling of fare revenues. These procedures are subject to LODI's approval. As a part of the fare collection procedures CONTRACTOR shall provide a passenger count report by each dial-a-ride vehicle along with all the reports set forth in the RFP.

10. Extra Services:

Such additional service hours above those contained in the Scope of Work, up to 1,500 additional hours, extra and promotional services, will be provided by CONTRACTOR upon prior written authorization by LODI's authorized representative at the hourly rate of \$ 14.52 in 1996-97, \$14.64 in 1997-98, and \$15.23 in 1998-99. Promotional services include but are not limited to participation in parades, community events, fairs and other such activities identified by LODI. Extra services requiring the CONTRACTOR to provide an additional vehicle or vehicles will be provided by the CONTRACTOR upon prior written authorization of LODI's authorized representative at a rate to be mutually agreed upon by Lodi and Contractor. All extra services shall be provided in addition to Basic Services as defined in Exhibit 1 (Scope of Work), and costs shall be treated as a change to this Contract as defined below under Paragraph 18, "Changes," and shall be in excess of the maximum price defined as "Maximum Obligation" in Paragraph 4 of this Agreement.

11. Performance Monitoring Program:

The CONTRACTOR's performance shall be reviewed and, where appropriate, penalties shall be assessed with each invoice based on the Performance Monitoring Program contained in Exhibit 1. The decision of LODI is final with respect to any assessment of penalties. Such penalties apply only to those periods of time when assessments are made. LODI and CONTRACTOR agree that the Performance Monitoring Program shall not be in effect during the first three (3) months of the system's operation.

Both parties agree the assessment of penalties relative to the Performance Monitoring Program shall not lessen Lodi's right to declare a material breach of his Agreement, particularly if the CONTRACTOR is assessed penalties for repeated failure to comply with the operating requirements and standards of this Agreement.

12. Control:

a. The parties intend that the CONTRACTOR, in performing the services specified hereunder, shall act as an independent CONTRACTOR and shall have full control of the work and the manner in which it is performed. The CONTRACTOR is not to be considered an agent or employee of Lodi and the CONTRACTOR's employees are not entitled to participate in any compensation program, pension plan, insurance, bonus or similar benefits Lodi may provide its own employees.

b. All services to be rendered by CONTRACTOR under this Agreement shall be subject to the review, monitoring and evaluation of Lodi to ensure performance of the activities described in the Scope of Work, as set forth in attached Exhibit 1. CONTRACTOR shall advise Lodi of matters of importance and make recommendations when appropriate; however, final authority regarding actions which would modify or change the Scope of Work shall rest with Lodi.

c. Lodi shall not directly discipline or terminate CONTRACTOR employees. Lodi may advise CONTRACTOR of any employee's inadequate performance which has a negative impact on the services being provided, and CONTRACTOR shall take prompt action to remedy the situation. In extreme cases, Lodi may demand, in writing, removal of a CONTRACTOR employee, and CONTRACTOR shall effect removal immediately.

13. Management:

During the term of this Agreement, CONTRACTOR shall provide sufficient executive and administrative personnel as shall be necessary and required to perform its duties and obligations under the terms of this Agreement.

14. Audit:

CONTRACTOR shall permit the authorized representatives of Lodi, the California State Controller's Office, the San Joaquin County Council of Governments, and other funding agencies as may become relevant to inspect and audit all data and records of the CONTRACTOR relating to performance under this Agreement.

15. Transportation Data Reporting:

CONTRACTOR shall report transportation data to Lodi in accordance with the California Public Utilities Code, Section 99243, and report and maintain records in accordance with Title 21 of the California Code of Regulations. At such time as may be required by the receipt of federal funding, reporting shall also be in accordance with the Uniform Accounting and Reporting Elements as required under Section 15 of the Urban Mass Transportation Act of 1964 as amended.

16. Information and Documents:

All information, data, reports, records, maps, survey results as existing, available, and necessary for carrying out the work as outlined in Exhibit 1, shall be furnished to CONTRACTOR without charge by LODI, and LODI shall cooperate in every way possible in the carrying out of the work without undue delay.

17. Retention of Records:

CONTRACTOR and LODI agree to retain all documents relevant to this agreement for four years from the termination of the contract or until all Federal/State audits are complete for such fiscal year, whichever is later. Upon request, CONTRACTOR shall make available these records to LODI, State, or Federal government's personnel.

18. Changes:

In the event LODI orders changes in Basic Services or wishes to provide Extra or other Services, LODI shall promptly notify CONTRACTOR in writing by change order of all changes. Compensation in excess of the "Maximum Obligation" (Paragraph 4) shall be allowed for "Extra Services" as defined in Paragraph 10. Any changes in Basic Services shall be subject to subsequent negotiation. Compensation for changes or Extra Services shall be in addition to the "Maximum Obligation," except to the extent that the Change deletes or diminishes the prior service obligations by CONTRACTOR.

19. Renewal:

This Agreement shall be in effect through June 30, 1999, unless otherwise modified or terminated. This Agreement may be extended for up to three additional one-year periods upon mutual agreement of both parties. The parties shall meet prior to two (2) months before the expiration date of this Agreement to develop a budget for the subsequent period. LODI, however, retains the right to solicit competitive proposals not later than during the 1998-99 fiscal year period for a new contract starting July 1, 1999.

20. Assignment or Subcontracting:

The CONTRACTOR shall not assign, sublet, transfer or subcontract any interest in this Agreement without the prior written consent of LODI.

21. Liaison:

CONTRACTOR shall assist and cooperate with LODI in meeting the objectives of providing quality public transportation services. CONTRACTOR shall perform close liaison activities, coordination, and cooperation with LODI Transportation Manager and other LODI departments.

22. Advertising:

No advertising of any type other than transit-related material shall appear either on the interior or the exterior of any vehicle placed in LODI transit service, unless specifically approved by LODI.

23. Medical Assistance to Passengers:

CONTRACTOR's employees shall not be required to perform any medical or quasi-medical functions for passengers, except sufficient action to stabilize the passenger until medical help can be reached. In the event of illness on board a vehicle, the driver shall advise the dispatcher by radio and may proceed immediately to a medical facility for help.

24. Communications:

All notices hereunder and communications with respect to this Agreement shall be effective upon the mailing thereof by registered or certified mail, return receipt requested, and postage prepaid to the persons named below:

If to CONTRACTOR:	<u>DAVE Transportation Services, Inc.</u> <u>26111 Antonio Parkway</u> <u>Rancho Santa Margarita, CA 92688</u> <u>Attn: Lisa Pearce, Contract Administrator</u>
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If to LODI:	<u>Public Works Director</u> <u>City of Lodi</u> <u>P.O. Box 3006</u> <u>221 West Pine Street</u> <u>Lodi, California 95241-1910</u>
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25. Disputes:

Except as otherwise provided in this contract, any dispute concerning or relating to the provisions of this contract which is not resolved through mutual agreement between CONTRACTOR and LODI'S Transportation Manager shall be decided by LODI's Public Works Director, who shall reduce the decision to writing and mail or otherwise furnish a copy thereof to the CONTRACTOR. The decision of LODI's Public Works Director shall be final and the matter closed, unless within thirty (30) days from the receipt of such copy, the CONTRACTOR mails or otherwise furnishes to LODI a written appeal. Such written appeal shall be heard by the LODI City Manager. The decision of LODI's City Manager for the determination of such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary, so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this clause, CONTRACTOR shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, CONTRACTOR shall proceed diligently with the performance of the contract and in accordance with the decision of LODI's Transportation Manager.

This clause does not preclude consideration of law questions in connection with decisions provided for in this clause, provided that nothing in this contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

26. Stop Work:

LODI may stop work on the transportation system upon forty-eight (48) hours written notice to CONTRACTOR. LODI shall be liable for all relevant costs defined under Paragraphs 4 through 6 incurred prior to the stop-work period and for restart, if any.

27. Termination:

If LODI's source(s) of funding ceases, LODI will have the right to terminate this agreement. Any intention by CONTRACTOR not to renew Contract at the normal anniversary is to be submitted in writing 120 days prior to said anniversary. In the event of such termination, LODI shall pay CONTRACTOR for services rendered to that date.

28. Right to Adequate Assurance of Performance:

Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct of a party with respect to other Agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is repudiation of this Agreement. Acceptance of any improper delivery, service or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

29. Failure to Perform:

It is agreed by both parties that strict adherence to the levels and schedules of operation defined in Exhibit 1 is of primary importance.

LODI recognizes that the operation of a public transit service is subject to circumstances and variables beyond the control of CONTRACTOR. However, a properly run service will take steps to reasonably deal with such circumstances without compromising the safety or reliability of the service.

LODI and CONTRACTOR will monitor service performance to assure that strict adherence of routes and schedules are being maintained. If performance is found to be substandard, LODI may request in writing adequate assurance of performance as defined under Paragraph 28 of this Agreement.

CONTRACTOR understands that continual substandard performance such as, but not limited to, service runs departing ahead of schedule, missed service runs, service runs departing scheduled stops fifteen minutes or more after the scheduled time, excess wait time, late pickup or delivery of passengers, frequent accidents and safety violations, and frequent public complaints regarding driver or dispatcher behavior are grounds for termination of this Agreement.

30. Damages and Misuse of Equipment, Tools, Facilities:

It is understood that excessive damages to and misuse of any equipment (including vehicles), tools and/or facilities by CONTRACTOR are grounds for termination of this Agreement.

CONTRACTOR shall not operate any LODI-owned vehicles on roads designated by LODI as unsuitable for such use.

31. Shortage and Delays:

In the event that LODI fails to provide or delays providing items as herein provided, in the number and size required, then CONTRACTOR shall not be responsible for any delays or resulting decline in the quality of service.

CONTRACTOR shall not be held responsible for losses, delays, failure to perform, or excess costs caused by events beyond the control of CONTRACTOR. Such events may include, but are not restricted to the following: Acts of God; fire, epidemics, earthquake, flood, or other natural disaster; acts of the government or public; riots, strikes or other labor disputes, war, civil disorder or fuel shortages. However, CONTRACTOR shall not receive payment for the vehicle service hour rate for vehicle service hours that are not provided, and shall only be paid the mutually agreed direct and indirect monthly fixed price expenditures during the period of time that service is not provided in the usual manner. CONTRACTOR also grants LODI the right to provide these services through other means on a temporary basis should CONTRACTOR be unable to perform said services.

32. Emergency Procedures:

In the event of a major emergency such as an earthquake, flood, or man-made catastrophe, CONTRACTOR shall make transportation and communication resources available to the degree possible for emergency assistance. If the normal line of direct authority from LODI is intact, CONTRACTOR shall follow instruction of LODI. If the normal line of direct authority is broken, and for the period it is broken, CONTRACTOR shall make the best use of transportation resources following to the degree possible the direction of an organization such as the Transportation Manager, police, Red Cross, or National Guard, which appears to have assumed responsibility. Emergency uses of transportation may include evacuation, transportation of injured, and movement of people to food and shelter. CONTRACTOR shall be reimbursed in accordance with the normal "Price Formula" (Paragraph 5) and "Payment" (Paragraph 8) or, if the normal method does not cover the types of emergency services involved, then on the basis of fair, equitable, and prompt reimbursement of CONTRACTOR's actual costs. Reimbursement for such major emergency services shall be over and above "Maximum Obligation" (Paragraph 4) of this Agreement. Immediately when the emergency condition ceases, CONTRACTOR shall reinstate normal transportation services.

33. Workers' Compensation:

CONTRACTOR certifies that it is aware of the provisions of the Labor Code of the State of California which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and it certifies that it will comply with such provisions before commencing the performance of the work of this Agreement.

CONTRACTOR shall provide Workers' Compensation and employer's liability insurance to cover its employees and CONTRACTOR shall require all SUBCONTRACTORS similarly to provide Workers' Compensation Insurance as required by the Labor Code of the State of California for all of the SUBCONTRACTOR's employees. All Workers' Compensation policies shall be endorsed with the following specific language:

"This policy shall not be canceled without first giving thirty (30) days prior notice to LODI by certified mail."

34. General Insurance:

Throughout the term of this Agreement, CONTRACTOR shall procure and maintain a comprehensive general liability policy(ies) providing five million dollars (\$5,000,000.00) combined single limit bodily injury and property damage coverage. Said policy(ies) shall include coverage for premises, personal injury, blanket contractual, but shall not include coverage for vehicle liability and/or vehicle physical damage insurance. CONTRACTOR shall name LODI as additional insured on said policies and shall provide evidence of such insurance. Such policy or policies shall provide that they may not be canceled without at least thirty (30) days written notice to LODI.

35. Vehicle Insurance:

LODI shall provide vehicle liability insurance in the amount of ten million dollars (\$10,000,000.00) combined single limit bodily injury and property damage coverage. Coverage will also include uninsured motorist and medical payments. Any deductible will be the responsibility of LODI. LODI shall name CONTRACTOR as an additional insured and shall furnish CONTRACTOR evidence of such insurance. Such policy or policies shall provide that they shall not be canceled without at least thirty (30) days written notice to CONTRACTOR. LODI will provide the physical damage (collision and comprehensive) insurance for vehicles provided to CONTRACTOR.

36. Endorsements:

a. All policies obtained by CONTRACTOR shall be endorsed with the following specific language:

1. LODI, its officers, agents and employees are named as additional insureds for all liability arising out of the operations by or on behalf of the named insured, and this policy protects the additional insured, its officers, agents, and employees against liability for bodily injuries, deaths, or property damage or destruction arising in any respect, directly or indirectly in the performance of the contract.

2. The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverages afforded shall apply as though separate policies had been issued to each insured.
3. The insurance provided herein is primary, and no insurance held or owned by Lodi shall be called upon to contribute to a loss for services provided by CONTRACTOR as specified in this Agreement.
4. The coverage provided by this policy shall not be reduced or canceled without thirty (30) days written notice given to Lodi by certified mail.

b. Documentation:

The following documentation of insurance shall be submitted by CONTRACTOR to LODI:

1. A Certificate of Insurance for Workers' Compensation Insurance for CONTRACTOR. A copy of the required policy endorsements given in subparagraph (a) shall be attached to each such certificate submitted.
2. Certificates of Insurance showing the limits of insurance, provided pursuant to this Agreement, certified copies of all policies, and signed copies of the specified policy endorsements for each policy.

37. Fidelity Insurance:

During the period of time this Agreement shall be in effect, CONTRACTOR shall cause its staff personnel to be covered under an appropriate insurance policy providing protection from employee theft up to the amount of ten thousand dollars (\$10,000.00) with respect to any one occurrence by CONTRACTOR's employees.

38. Indemnification and Save Harmless:

This Agreement is entered into upon the express condition and material covenant by CONTRACTOR that LODI and its officers, agents, employees and servants, are to be free from any and all liability, loss, and/or expenses arising as a consequence of any acts or omissions by CONTRACTOR pursuant to this Agreement.

CONTRACTOR hereby warrants that all its work will be performed in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state, and local laws, regulations, and ordinances, it being understood that acceptance of CONTRACTOR's work by LODI, shall not operate as a waiver or release of CONTRACTOR. CONTRACTOR will be responsible for obtaining any and all permits at its expense.

CONTRACTOR shall investigate, indemnify, defend and hold harmless LODI, its officers, employees and agents from any and all claims, demands, losses, or liabilities of any kind or nature whatsoever, whether real or illusory, which LODI, its officers, employees and/or agents may sustain or incur, or which may be imposed upon them or any of them for any acts or omissions arising from CONTRACTOR's actions, performance, attempted performance, or non-performance of this Agreement.

This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable by or for the services and tasks described in this Agreement or its agency under Workers' Compensation acts, disability benefit acts or other employee benefit acts.

39. Nondiscrimination:

a. In connection with the execution of this Agreement, CONTRACTOR shall not discriminate against any employee or applicant for employment because of age, race, religion, color, sex, disability, or national origin. CONTRACTOR shall take affirmative actions to insure that employees are treated during their employment without regard to their age, race, religion, color, sex, disability, or national origin.

b. CONTRACTOR shall also comply with the requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and with all applicable regulations, statutes, laws, etc., promulgated pursuant to the civil rights acts of the state and federal government now in existence or hereafter enacted. Further, CONTRACTOR shall also comply with the provisions of Section 1735 of the California Labor Code.

40. Permits to Operate:

At its sole cost and expense, CONTRACTOR shall obtain any and all permits, licenses, certificates, or entitlements to operate as are now or hereafter required by any agency, specifically including the California Public Utilities Commission, the California Highway Patrol, the Department of Motor Vehicles, and local building/planning departments, to enable CONTRACTOR to perform this agreement, and shall provide copies of all such entitlements to LODI when received by CONTRACTOR.

41. Proprietary Rights:

All inventions, improvements, discoveries, proprietary rights, patents, and copyright made by CONTRACTOR under this Agreement shall be made available to LODI with no royalties, charges, or other costs, but shall be owned by CONTRACTOR. All manuals prepared by CONTRACTOR for use by CONTRACTOR in other locales shall be made available to LODI at no charge but shall be owned by CONTRACTOR and shall not be copied, disclosed, or released by LODI or LODI's representative or participating organization without prior written consent of CONTRACTOR. Reports and manuals prepared by CONTRACTOR under this Agreement for specific use in LODI's transit system shall become the property of LODI. CONTRACTOR, however, shall have the right to print and issue copies of these reports. CONTRACTOR may make presentations and releases relating to the project. Papers, reports and other formal publications shall be approved by LODI prior to release.

42. Independent Contractor:

Neither of the parties hereunder shall be deemed to be the agent, employee, partner, or joint venturer of the other. CONTRACTOR is and should be an independent CONTRACTOR performing services under this Agreement for the consideration herein above set forth.

43. Conflict of Interest:

CONTRACTOR promises that it presently has no interest which would conflict in any manner or degree with the performance of the services hereunder. CONTRACTOR further promises that in the performance of this contract, no person having such an interest shall be employed.

44. Conflict of Transportation Interests:

CONTRACTOR shall not divert any revenues, passengers, or other business from LODI's project or any portion contracted out to other SUBCONTRACTORS to any other transportation operation of CONTRACTOR.

45. Interest of Members of or Delegates to Congress:

No member of or delegate to Congress of the United States shall be admitted to any share or part of this contract or to any benefit arising therefrom.

46. Prohibited Interest:

No Board member, officer, or employee of LODI during his/her tenure or one year thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof.

47. Transfer of Title to Supplies:

Supplies purchased by CONTRACTOR in connection with the performance of this Agreement shall become the property of LODI.

48. Conflicting Use:

CONTRACTOR shall not use any vehicle, equipment, personnel or other facilities which are provided by LODI for any use whatsoever other than provided for in this Agreement.

49. Transition to Future Transit Service Provider:

For up to forty-five (45) days following the effective date of the termination or expiration of this Agreement, CONTRACTOR shall provide to either LODI or any future provider selected by LODI, CONTRACTOR's full cooperation in the transition to the successor provider. This shall include, as a minimum, consultation regarding labor and management issues (including a delineation of wages and benefits by employee category), access to non-confidential personnel files and maintenance records.

CONTRACTOR's telephone equipment shall be made available to the successor provider pending installation of the new provider's equipment. CONTRACTOR shall release the system's telephone numbers and any sequential roll-over number to the new provider. CONTRACTOR shall provide its best professional effort to assure a smooth transition from CONTRACTOR's services to the successor provider's services, and shall cooperate fully with LODI and the successor provider to this end.

50. Headings:

The headings or titles to Sections of this Agreement are not part of the Agreement and shall have no effect upon the construction or interpretation of any part of this Agreement.

51. Merger:

This contract and its Exhibit along with the RFP and proposal documents contains all the agreements of the parties hereto and no prior agreements or understandings shall be effective or binding for any purpose.

52. Modification of Agreement:

CONTRACTOR and LODI hereby agree that the terms and conditions of this Agreement may be modified in any particular only upon mutual consent of the parties as evidenced by a written statement executed by the parties.

53. Attorney's Fees

In any dispute arising out of this agreement that is litigated the prevailing party shall receive full payment plus attorneys fees and costs associated with such litigation.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective officers thereunto duly authorized on the date written below their signatures.

CITY OF LODI, a municipal

CONTRACTOR

DAVID P. WARNER, Mayor

DAVE TRANSPORTATION SERVICES, INC.

Date: _____

Date: _____

Witnessed by:

And by:

Date: _____

Date: _____

Approved as to form:

RANDALL A. HAYS, City Attorney

Date: _____

RESOLUTION NO. 96-141

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING
THE MAYOR TO ENTER INTO AN AGREEMENT WITH DAVE
TRANSPORTATION SERVICES, INC., FOR TRANSIT SERVICES, AND
APPROVING OTHER RELATED ACTIONS

=====

BE IT RESOLVED that the Lodi City Council does hereby authorize the Mayor to enter an agreement with DAVE Transportation Services, Inc. for Transit Services; and

BE IT FURTHER RESOLVED that the Mayor is authorized to execute the agreement on behalf of the City of Lodi; and

BE IT FURTHER RESOLVED that the Lodi City Council does hereby approve the following transition related actions:

1. Authorize payment of all sick leave balances to transit personnel at the time of transition; and
2. Authorize deviation from City policy regarding PC Loan Repayment for two transit drivers to make continued monthly payments until payment is received in full.

Dated: September 18, 1996

=====

I hereby certify that Resolution No. 96-141 was passed and adopted by the City Council of the City of Lodi in a regular meeting held September 18, 1996 by the following vote:

AYES: Council Members - Davenport, Mann, Pennino, Sieglock
and Warner (Mayor)

NOES: Council Members - None

ABSENT: Council Members - None

ABSTAIN: Council Members - None


JENNIFER M. PERRIN
City Clerk



MEMORANDUM

TO: The Honorable Mayor
and City Council

FROM: Bob Christofferson, Interim Deputy City Manager

A handwritten signature in dark ink, appearing to read "Bob Christofferson", is written over the "FROM:" line.

DATE: September 19, 1996

SUBJ: Health Insurance Costs for City Transit Employees

There has been understandable interest on the part of City transit personnel regarding health insurance costs under the contract with DAVE Transportation Services, Inc., and because DAVE has been in transition from one health insurance provider (Pacific Care, as described in DAVE's proposal) to another (Aetna), the facts have not been as available as we would have liked.

To satisfy this interest on the part of transit personnel, we have secured some information from DAVE that should be useful.

First of all, transit personnel have been receiving coverage for themselves only (no dependent coverage) under the terms of their individual contracts with the City. The coverage of the Foundation Health plan is very similar (if not identical) to DAVE's Aetna plan. There is no cost to the employee, but it is also not possible to purchase coverage for dependents.

Under the Aetna plan provided by DAVE, coverage for the employee will cost \$5.00 per pay period, or about \$10 per month, with DAVE calculating the cost at 6 1/4 cents per hour on the drivers' wage structure. The employer pays the great majority of the cost. If the employee wishes to cover one dependent (which is not possible under their present contract) the cost is \$60 per pay period: for an entire family, the cost is \$110 per pay period. DAVE offers a 125K flexible contribution plan, which permits the employee to pay his or her share of the cost in pretax dollars.

We have been careful to ensure that there will be no gaps in coverage between the City plan and the DAVE plan, and to ensure that preexisting conditions will be covered.

In summary, the coverage for the employee will be virtually identical under the DAVE plan as under the City's plan, and while there is some cost to the employee, the employee does have the flexibility of including his or her family, and the further flexibility of paying this cost in pretax dollars.

cc: Transit Personnel